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FILED
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MARSHALL C. RICHMOND)	Case No. 03-370-KI
)	
v.)	MOTION FOR UNADDRESSED ISSUE,
)	MOTION FOR NEW TRIAL UNDER
UNITED STATES OF AMERICA.)	FED.R.CRIM.P. 33(b)(2)
)	

COMES NOW, Marshall Richmond, pro se and in forma pauperis with his Motion For Unaddressed Issue, Motion For New Trial, pursuant to Fed.R.Crim.P. 33(b)(2).

FED.R.CRIM.P. 33(b)(2) PROVIDES:

(A) Defendant's Motion: Upon Defendant's motion, the Court may vacate any judgment and grant a new trial if the interest of justice so requires; if the case was tried without a jury, the Court may take additional testimony and enter a new judgment.

(B) Time To File:

(1) On newly discovered evidence, any motion for a new trial grounded on newly discovered evidence, must be filed within 3 years after the verdict or finding of guilty. If an appeal is pending the Court may not grant a Motion For A New Trial until the Appellant remands the case.

(2) Other grounds: Any motion for a new trial grounds on any reason other than newly discovered evidence must be filed within

7 days after the verdict or finding of guilty.

ARGUMENT

In Petitioner's 18 U.S.C. § 2255, filed 8-30-06, the issue that went unaddressed was his Motion For A New Trial, since he had written a letter to Judge Garr M. King that he received on September 27, 2004 in the chambers of Garr M. King, United States District Court. (See Exhibit A)

The Court should have construed the letter filed by pro se Defendant as a motion so that the Court may properly address it. See, United States v. Rae, 2006. Also see, United States v. Alpine Land & Reservoir Co., 983 F.2d 1487 (9th Cir. 1993), we considered the tribe's claim of lack of perfection, abandonment and forfeiture in the context of a single issue; whether the District Court erred by failing to address these claims, we held that such failure was indeed error. *Id.* at 1227-28.

Thomas v. Gonzales, 409 F.3d 1177 (9th Cir. 2004), unaddressed claims in an earlier petition would not be a "successive" petition within the meaning of 28 U.S.C. § 2255.

Bridges v. Berghuis, 2009 U.S. Dist. Lexis 71136, Section 2255 relief is reserved for error of constitutional dimension and other injuries that could not have been raised on direct appeal and, if left unaddressed, would result in a complete miscarriage of justice. 160 L.Ed.2d 881, 843 U.S. 447, Bell V. Cone, 2005

Opinion Justice Ginsburg with whom Justice Souter and Justice Breyer join concurring.

Today's decision, as I comprehend it, is confined to the situation the Sixth circuit posited, one in which the state court

has confronted and decided an issue governed by a prior ruling. This Court's opinion: it bears emphasis, does not grapple with the following scenario: A state prisoner petitions for Federal habeas review after exhausting his state remedies. In the anterior state proceeding, the prisoner raised multiple issues. The state court, in disposing of the case, left one or more of the issues unaddressed. These would be no warrant in such a case for an assumption that the state court sub silentio, considered the issue and resolved it on its merit in accord with the state's relevant law. Nothing in the record would disconnect the possibility that the issue was simply overlooked. A Federal court would act arbitrarily if it assumed that an issue raised in state court was necessarily decided there despite the absence of any indication that the state court itself adverted to the point.

It's quite clear from the record on Petitioner's § 2255 issue of his Motion For A New Trial went unaddressed, and through Circuit and Supreme Court clearly says it's a miscarriage of justice and it needs to be sent back to be heard on its merits. Fraud upon the court, defective indictment, experts not qualified to testify under 702.

CONCLUSION

For the reasons above, the Court should grant Petitioner's motion if it is to believe that the justice system works uniformly within itself.

Dated this 2 day of November, 2009.

Respectfully submitted,

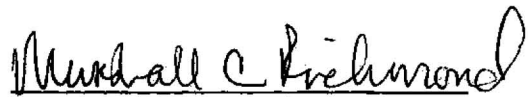

MARSHALL C. RICHMOND

EXHIBIT A

RECEIVED

SEP 27 2004

IN THE CHAMBERS OF
GARR M. KING
UNITED STATES DISTRICT COURT

Dear Judge King

I'm writing you in regard to the conviction I've just received. I truly feel that my attorney presented the best defense that a person could have presented, and by the end of it all I feel that I was treated fairly and prejudice do to the facts that I presented exonerated material that would have had me a free man.

I was in an accident on May 29 2003 and I was being treated by my chiropractor and a Physical Therapy and my appointment were introduced into evidence which also reflected the dates & time that I had attended my session which was all introduced to the jury. The key dates I would like for you to look at is the 17, 19, 25 of June and time. Not that it is peer speculation it's a fact! and I feel that it is a judges duty to look over what the jury has done and fix what was a true error.

Because I truly feel that the jury did not fully obligate themselves to do the job that was required. so I feel that it is my duty to let the court know that I've been mistreated, and the time that comes with the conviction will be very harsh, which I feel I do not deserve.

I know from the bottom of my heart that justice will prevail and you will look into my situation and with your authority it could and should be fix. Because the people that will be affected by the out come of the sentence will devastate my family and kids them especially them; because they really don't understand. The doctor that treated me is Dr Walter C Trapp, D.C. Alternative Health care & Chiropractor Center 15938 SE Division # 761 9648. and I have been dealing with Dr Trapp for over 10 years if you look at my record with him you will see I have a relationship with him and his staff.

so with that I still hold my innocence
to the degree that I have been falsely
accuse of 7 crimes that I did not
commit. because there is know way that
I was doing contrall buy with the police
because if I am prove beyond a reason-
able cloubt that I didnt do the crime
then I should not do the time.

if there
is know change in this then I will
present this in open court so with that
may God bless you to have a open mind
& heart and do what is right.

Thank you.
Marshall Richmond